IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
WRIT PETITION NO.446 OF 2000

Shri Prabhakar Bhaskar Kale
residing at H.No.1166,
Budhwar Peth, Pune 411 002. ...Petitioner.

V/s.

The Union of India & Ors.
(Bharat Sarkar)
The Secretary Government of India,
Ministry of Home Affairs,
Griha Mantralaya,
Lok Nayak Bhavan Khan Market,
New Delhi 110 003. ...Respondents.

Mr.M.V.Limaye for the Petitioner absent.

Mr.Y.R.Mishra for Union of India, respondent no.1.

Mr.Vinay Sonpal, A.G.P. for respondent nos.2 and 3.

CORAM: B.H.MARLAPALLE &
N.H.PATIL, JJ.
DATE : 13th September, 2006.
P.C.:

1. The petitioner claims that he had participated in the "Quit India National Movement, 1942" for which he was convicted by the British Army Court Martial and awarded rigorous punishment for one year and dismissed from the military service. He had undergone punishment in Central Jail, Jabalpur. The petitioner had also participated in "Goa Mukti Sangram" in the year 1955 for which he was arrested for one day, lathi charged and released by the Portuguese Government. The then Chief Minister of Government of Maharashtra awarded him

"Sanman Patra" on 27.12.1972 and also the bronze medal. As per him, his name was also published by the Government of Maharashtra in "Swatantrya Sainik Charitra Kosh". He had submitted an application on 4.4.1972 through proper channel, i.e., the Collector of Pune for grant of freedom fighters pension alongwith necessary documents and by the order dated 18.10.1972, he was granted freedom fighters pension with effect from 15th August, 1972 (Swatantrya Sainik Sanman Pension). Initially, he was getting an amount of Rs.200/- per month and it was increased upto Rs.3,000/- per month from 15.8.1997 onwards. Thus, he continued to be the pensioner of "Swatantrya Sainik Sanman Pension" for about 27 years. By the order dated 17.7.1998, the said pension was suspended, he was issued a show-cause notice which was replied by him on 25.7.1998 and finally by the impugned order dated 11.12.1998 pension sanctioned to him was cancelled and recoveries of pension were ordered. While admitting this petition, recoveries have been stayed by this Court.

2. On behalf of the respondent authorities of the Union of India, affidavit-in-reply has been filed by the Section Officer, Freedom Fighter’s Division, Ministry of Home Affairs, New Delhi and in response thereto, the petitioner has filed affidavit in rejoinder.

3. The certificate issued by the Superintendent, Central Jail, Jabalpur on 27.9.1967 states that Shri P.B.Kale Ex-131107 son of Bhaskar Brahmin served the country with the following details in the National Movement.

Date of Sentence: 1-9-42

No. of Admission with date: 6958 dated 2-9-42.

Sentence: One year R.I. under section Disobedience of lawful commands Period from 1-9-42 to 3-7-43.

4. The certificate further stated that he was released on 3.7.43 and was admitted directly as per the order of Officer Commanding No.I, No.4 I.A.O.C. Katni. In the Show-cause notice dated 17.7.1998 issued by the Under Secretary to the Government of India and against the petitioner, it was pointed out that the certificate submitted by the petitioner regarding his imprisonment in Jabalpur Jail for one year did not mention his name in the record as the freedom fighter prisoner and the reference was made to the Ministry of Defence. The

notice further stated that the petitioner's claim that he had undergone sentence in Jabalpur Jail as freedom fighter and that he was in Indian Army were false.

5. In reply to the show-cause notice, the petitioner could not give details of his employment under the Indian Army and under the Armed Forces and the details like Regiment No., Shipai No., etc. could not be furnished by the petitioner. By his letter dated 3.7.1998 addressed to the Ministry of Home Affairs, Government of India, the petitioner stated that in June, 1942, he was recruited by Katni I.A.O.C. Training Centre and was discharged on 31st August, 1942 on account of the Court Martial. Thus, as per the petitioner himself, for a short period of two months, he was with I.A.O.C. Training Centre, Katni.

6. The letter dated 12th February, 1957 addressed to the Petitioner at his Pune Address by the EME Records Office clearly states that while he was serving with 4 Training Battalion I.A.O.C. Centre Katni for disobeying the lawful commands of superiors inasmuch as he failed to fall in for fatigue on 31st August, 1942 and, therefore, he was Court Martialed and directed to suffer rigorous imprisonment for one year. He was also

dismissed from service. All these details were found by the Ministry of Home Affairs when two different applications recommended by the petitioner were received by the Home Ministry. Shri B.D.Gokhale and Shri L.L.Nargunde also applied for freedom fighter's pension on the recommendation of the petitioner and during the investigation, as a matter of defence, it was noticed that the claims were false. Thus, the applicants were called upon to furnish Army Unit, Rank, No.,etc. to which they did not respond. The petitioner's case was, therefore, investigated and the EME Records office addressed the letter dated 29th October, 1998 to the petitioner intimating him that he was tried by the summary court martial while serving with 4 training battalion I.A.O.C. Centre Katni for disobeying the lawful command of superior officer and the Court awarded him RI for one year and dismissed him from service for the said offence. It is thus, clear that the sentence which the petitioner underwent in Central Jail at Jabalpur was not on account of his participation in the "Quit India Movement" of freedom struggle and he suffered the said sentence on account of the court martial due to his failure to maintain army discipline while he was with the I.A.O.C. Training Centre from June to August, 1942 and the court martial was on account of his refusal to obey the superiors' commands

that is to fall in fatigue. Hence, the decision of the Government of India to cancel the freedom fighters pension awarded to the petitioner does not call for any interference in the terms. We dismiss the petition but looking at his age, we direct that no recoveries shall be made from the petitioner for the period he received freedom fighters pension.

7. Rule discharged with no order as to costs.

(N.H.PATIL,J.), **(B.H.MARLAPALLE,J.)**